

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA08-669

BRUCE DEUTSCHER,
APPELLANT

V.

ALUMINUM COMPANY OF
AMERICA and COMPENSATION
MANAGERS, INC.,
APPELLEES

Opinion Delivered 4 MARCH 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. E813422]

REVERSED AND REMANDED

D.P. MARSHALL JR., Judge

This workers' compensation case is about Bruce Deutscher's entitlement to wage-loss disability benefits. Deutscher, a thirty-four year employee of Aluminum Company of America (ALCOA), hurt his lower back in 1998 while attempting to raise an elevator door at work. ALCOA accepted the injury as compensable and paid for benefits, including back surgery and a fifteen-percent permanent impairment rating. In 2003, Deutscher retired from ALCOA. He eventually sought wage-loss disability benefits, which ALCOA refused to pay. After a hearing, the administrative law judge determined that Deutscher failed to prove that he was entitled to those benefits. The Commission affirmed. Deutscher appeals, and we reverse and remand for findings, consideration of medical evidence, and clarification of a legal issue.

The Commission had the duty of determining Deutscher's entitlement to wage-loss disability based upon the consideration of the medical evidence and other factors affecting his future earning capacity, such as his age, education, and work experience. *Johnson v. Latex Construction Co.*, 94 Ark. App. 431, 436, 232 S.W.3d 504, 509 (2006). The ALJ's opinion—which the Commission affirmed and adopted—denied Deutscher's claim, stating that “[w]hen the entire record is reviewed, the preponderance of the evidence shows that the claimant has, indeed, suffered a diminution in his ability to earn a living, but not in excess of the level of his anatomical impairment, which the parties agreed is 15% to the body as a whole.”

This opinion lacks findings of fact upon which the Commission relied to support its legal conclusion. *Wright v. American Transportation*, 18 Ark. App. 18, 22, 709 S.W.2d 107, 110 (1986). Because of the lack of findings, we are unable to determine whether the Commission appropriately considered the wage-loss factors. *Bradley v. Alumax*, 50 Ark. App. 13, 15, 899 S.W.2d 850, 851 (1995). We are also unable to determine whether the Commission considered a vocational specialist's testimony that Deutscher's probable wages, should he return to work, would be significantly lower than his average weekly wage prior to his back injury. Absent these essential findings, we are unable to conduct a meaningful appellate review. *Wright*, 18 Ark. App. at 20–22, 709 S.W.2d at 109–10. We therefore reverse and remand.

We remand for a second reason. In evaluating wage-loss, the Commission

arbitrarily disregarded medical evidence. It may not do this. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). Following Deutscher's 2003 back surgery, both Dr. Jim Moore and Dr. Mark Martindale indicated in their medical records that he was unable to re-enter the workforce. The Commission's opinion does not address these doctors' medical records or opinions. Though the Commission has the authority to accept or reject medical opinions, it may not arbitrarily disregard medical evidence in evaluating Deutscher's entitlement to wage-loss disability. *Coleman v. Pro Transportation, Inc.*, 97 Ark. App. 338, 347–50, 249 S.W.3d 149, 155–59 (2007).

One final point. There is an embedded legal issue that, though Deutscher touches upon it, the parties do not squarely address in their appeal briefs. The Commission held that Deutscher “has, indeed, suffered a diminution in his ability to earn a living, but not in excess of [his 15%] anatomical impairment” The Commission's opinion could be read to say that, in determining wage loss, an employer gets a direct loss-of-earning-capacity credit for the employee's percentage of anatomical impairment. We are not convinced that this interpretation of the law is correct.

An injured employee is entitled to payment for his anatomical impairment whether his earning capacity is diminished or not. *Johnson v. General Dynamics*, 46 Ark. App. 188, 192, 878 S.W.2d 411, 412 (1994). Thus when Deutscher's doctor assigned

him a fifteen-percent rating, it was for permanent functional impairment, regardless of any diminution in his future earning capacity. But that impairment was also one factor, along with Deutscher's age, education, and work experience, that the Commission had to consider in determining his entitlement to wage-loss benefits. Ark. Code Ann. § 11-9-522(b)(1) (Repl. 2002); *Bradley*, 50 Ark. App. at 15, 899 S.W.2d at 851. We do not read the statute or cases to suggest that Deutscher's impairment rating translates into a straight credit for some amount of loss of earning capacity. The Commission must consider all of the relevant factors in determining Deutscher's entitlement to wage-loss disability—the extent to which his injury has affected his ability to earn a living. *Johnson*, 94 Ark. App. at 436, 232 S.W.3d at 509 (2006).

Reversed and remanded.

ROBBINS and BROWN, JJ., agree.